

# EXTENSIONS OF REMARKS

## UNSOLICITED LOAN CHECK CONSUMER PROTECTION ACT OF 1999

**HON. JOHN J. LaFALCE**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 24, 1999

Mr. LaFALCE. Mr. Speaker, I am today introducing legislation to address the problem of "live" loan checks that are mailed to consumers as part of credit solicitations. My bill, the "Unsolicited Loan Check Consumer Protection Act of 1999," amends the Federal Truth in Lending Act to prohibit credit solicitations involving "live", or negotiable checks and to clarify that consumers cannot be held liable for any debt created by live check solicitations.

Each month financial companies mail out thousands of live checks to consumers to entice them to accept credit offers. They come in official looking envelopes and are accompanied by letters instructing the recipient that all the check requires is their signature to become instant cash—and a fixed-term, high cost loan with interest rates often as high as 25 percent!

Live check solicitations target senior citizens, young families in need of credit and individuals generally who are already heavily in debt. The amounts of the checks may appear manageable at first glance—typically between \$1,500 and \$3,000. But they can trap consumers in fixed loan payments for three or four years, with any default or late payment triggering high fees, higher interest charges and demands for immediate payment in full.

At a minimum, live check solicitation create widespread anxiety about potential liability if the checks are stolen and cashed. In some instances, they have been mistaken for government benefits or insurance reimbursement checks and cashed by elderly recipients. More often, however, live check solicitations entice consumers to take on added debt they didn't request, they can't request, they can't afford and, often, they can't repay.

The problem of unsolicited live loan checks was brought to my attention by several constituent letters I received earlier this year. In one letter a man asked how his wife, who had earned only \$1,850 the previous year, could possibly qualify to receive a \$5,000 loan check based on her "excellent credit standing". Another letter described a young man in his early twenties who had received several loan check solicitations, between \$1,500 and \$2,000 each, despite the fact that he worked at an entry level job and had little credit history. The letter asked how any responsible financial institution could offer this young man thousands of dollars "just for extra cash" and expect him to repay the debt at 22 percent interest.

The answer in both instances is that no responsible credit underwriting was involved. Credit was offered without any debt to income calculation to determine if the recipient could afford additional debt. No effort was made to determine whether the recipient had sufficient income to make monthly payments. The lenders

didn't even care how the loan proceeds would be used. Live check solicitations have one purpose, and one purpose only—to entice and trap consumers into high-cost debt that they would never accept if offered by more legitimate means.

Live check solicitations are not a new problem. They first began appearing in consumers' mailboxes in 1996 and immediately raised widespread concerns regarding consumer liability and abuse. The live loan checks were equated by the press and consumer groups with the live credit card solicitations that had caused similar consumer concerns in the 1960s. Congress responded to these earlier concerns in 1970 with a broad prohibition against all mailing of unsolicited credit cards to consumers.

Seeking to avoid a similar prohibition on live check solicitations, the financial industry promised in 1997 to implement voluntary disclosure and security measures to minimize consumer confusion and potential liability. While of questionable benefit to begin with, these so-called "protections" were never uniformly implemented in live check solicitations in 1998. And they have largely disappeared from many of the live check solicitations that consumers have received this year.

At a White House briefing in May, President Clinton equated the problem of live loan checks with the earlier problems of unsolicited credit cards and called upon Congress to enact a similar prohibition against live loan check solicitations. "Consumers should not feel they have to shred their daily mail," the President noted, in order to avoid the potential liability and credit record hassles that can result from live check solicitations.

The legislation I am introducing would address the problem of live loan check solicitations in several ways. First, it proposes a broad and unequivocal prohibition against any credit solicitation to consumers involving a check or other negotiable instrument that has not been applied for or requested in advance by the consumer. Second, it clarifies that no consumer will be held liable for repayment of any debt arising from a live check solicitation, nor may creditor submit adverse information about a consumer to a credit bureau relating to any debt arising from such solicitations. Third, the bill requires the Federal Reserve Board to publish final regulations to implement this prohibition within 6 months after enactment.

The bill section that clarifies consumer liability is extremely important and distinguishes my bill from earlier proposals to address this issue. While proposing a prohibition on live check solicitations these proposals would continue to make consumers liable for any prohibited live check solicitation they voluntarily or inadvertently Deposit. This approach fails to address the problems of individuals who don't understand the implications of the check solicitations, or who confuse them with the other check payments or reimbursements, and would continue to encourage live check solicitations targeted to the most vulnerable groups.

The bill also includes a provision to provide the Federal Reserve with authority to issue regulations, if it becomes necessary, to address the related problem "look-alike" checks in credit solicitations. Look-alike checks are typically for amounts significantly larger than live loan checks and are used primarily by so-called sub-prime lenders to solicit second mortgages and home equity loans. While non-negotiable, the "checks" often have all the elements of negotiable instruments, including what appear to the consumer as account numbers, clearance bar codes, official signatures—with some even including the FDIC logo or other government-related symbols. Their purpose is clearly to attract consumer attention by looking as close to an official bank or government check as possible. In some instances the fact that they are non-negotiable is not clearly apparent, or is disclosed only in very small print.

My concerns with "look-alike" checks center on the possibility, if we succeed in prohibiting live check solicitations, that numerous creditors will shift to "look-alike" checks to attract and confuse consumers. If this becomes as widespread as I fear it will, the Federal Reserve would have the authority to address it with guidelines that could, for example, restrict the use of government symbols or require that these "checks" state prominently that they are "non-negotiable." Such regulation is merely discretionary in the bill, it is not required.

I agree with President Clinton that consumers should not feel they have to shred their daily mail to avoid liability for unsolicited loan checks. I do not believe that senior citizens should be deceived into high-cost debt by mailings designed to look like government checks. I oppose any practices that attempt to lure low-income families with easy credit under terms they clearly cannot afford. And I strongly believe that all solicitations of consumer credit should be subject to thorough and responsible credit underwriting.

Mr. Speaker, the problems of unsolicited loan checks parallel those of unsolicited credit cards three decades ago. I urge the Congress to respond in similar fashion by enacting a board and unambiguous prohibition on live loan check solicitations. I urge consideration of this legislation at the earliest opportunity.

The text of the bill follows:

H.R. —

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Unsolicited Loan Check Consumer Protection Act of 1999".

### SEC. 2. UNSOLICITED LOAN CHECKS PROHIBITED.

(a) IN GENERAL.—Chapter 2 of the Consumer Credit Protection Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

#### "SEC. 140. SOLICITATIONS FOR CONSUMER LOANS.

"(a) 'LIVE' LOAN CHECKS PROHIBITED.—No consumer credit which is otherwise subject

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

to this title may be extended by any creditor through the use of a check or other negotiable instrument which has been sent by the creditor to the consumer in connection with a solicitation by the creditor for such extension of credit, unless the consumer has submitted an application for, or otherwise requested, such extension of credit before receiving the check or instrument.

"(b) CONSUMER NOT LIABLE.—If any creditor includes a check or other negotiable instrument in a solicitation to a consumer for an extension of credit sent by a creditor to a consumer in violation of subsection (a)—

"(1) the consumer shall not be liable for the amount of any such check or other negotiable instrument; and

"(2) no information on any liability of the consumer alleged by the creditor to have been established through such check or other negotiable instrument may be reported to or received by any credit agency (as defined in section 603 of the Fair Credit Reporting Act) or included in any consumer credit report under such Act.

"(c) REGULATIONS.—

"(1) REGULATIONS REQUIRED.—

"(A) IN GENERAL.—Before the end of the 6-month period beginning on the date of the enactment of the Unsolicited Loan Check Consumer Protection Act of 1999, the Board shall prescribe final regulations to implement the requirements of this section.

"(B) MODIFICATIONS.—The Board shall modify and clarify any regulation prescribed under subparagraph (A) whenever the Board determines such action to be necessary to prevent any circumvention of the requirements of this section or to facilitate compliance with such requirements.

"(2) LIMITATIONS ON 'LOOK-ALIKE' CHECKS.—

"(A) REGULATIONS AUTHORIZED.—The Board may, if the Board finds that such action is necessary to prevent confusion by consumers, prescribe regulations setting forth guidelines for the use, in a solicitation for an extension of credit, of certificates, vouchers, or other non-negotiable instruments that are intended to have the appearance of a check or other negotiable instrument, but which do not violate subsection (a) of this section.

"(B) DISCLOSURES AND OTHER REQUIREMENTS.—Any regulation prescribed under subparagraph (A) shall include such disclosures and modifications relating to the appearance and use of certificates, vouchers, or other non-negotiable instruments in a solicitation for an extension of credit as the Board determines necessary or appropriate."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Consumer Credit Protection Act is amended by adding at the end the following new item:

"140. Solicitations for consumer loans."

(c) SCOPE OF APPLICATION.—The requirements of this Act and the amendments made by this Act shall apply to solicitations for extensions of credit made to consumers after the date of enactment of this Act.

IN HONOR OF RICHARD W. POGUE

**HON. DENNIS J. KUCINICH**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 24, 1999*

Mr. KUCINICH. Mr. Speaker, I rise today to honor Richard W. Pogue for his outstanding dedication and contribution to public service in Greater Cleveland. Today, Richard joins a select group of individuals by being saluted with the "In Tribute to the Public Service" Award.

Mr. Pogue is a native of Cambridge, Massachusetts and received a BA from Cornell Uni-

versity and a JD from the University of Michigan. Over the years, Pogue has used his expertise and time in a variety of ways. He has been actively involved in the business, education, social services, nonprofit and cultural sectors of our Cleveland community.

Pogue has served in a wide array of organizations, including The Cleveland Foundation, University Hospitals Health System, the Greater Roundtable, Cleveland Institute of Music, Cleveland Bicentennial Commission (Co-chair), and the 1989 Untied Way Cleveland Campaign, which raised about \$52,000,000. In addition, he is the principal organizer of an innovative organization: the Northeast Ohio Regional Business Coalition. As if this was not enough, he currently serves as a Director of Continental Airlines, Inc. (Houston), Derlan Industries Limited (Toronto), M.A. Hanna Company, IT Group, Inc. (Pittsburgh), KeyCorp, LAI Worldwide Inc. (New York City), Rotek incorporated (Aurora) and TRW Inc.

Mr. Pogue's commitment and dedication has not gone unnoticed. Pogue is also recipient of the "Humanitarian Award" from the National Conference of Christians and Jews, the "Excellence in Philanthropy Award" from the Ohio Council of Fund Raising Executives, "Economic Development Leadership Award" from the Council for Urban Economic Development, and "Man of the Year" by Plymouth Church of Shaker Heights, just to name a few.

My fellow colleagues, join me in saluting Richard W. Pogue for his continual commitment to our community. He is a renowned citizen of Cleveland and I am pleased to recognize his accomplishments.

IN TRIBUTE TO BILLY K. HIGGINS

**HON. FRANK R. WOLF**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, June 24, 1999*

Mr. WOLF. Mr. Speaker, I want to pay tribute today to a gentleman I met in my early days in Washington in the 1970's at the Department of the Interior, and whose path I again crossed when I came to Congress.

Billy K. Higgins has worked for more than 25 years to advance our nation's transportation system, first as a congressional liaison officer for the Federal Highway Administration, and since 1977 as the governmental relations director of the American Association of State Highway and Transportation Officials (AASHTO). He has also worked for the Republican National Committee, and the Standard Oil Company of Indiana, now Amoco Oil Company.

But for the past 22 years he has represented the state departments of transportation through a period of tremendous change, as the construction of the Interstate system was completed, as the focus of federal transportation interests broadened, and as the world became increasingly dependent on the economic lifeline transportation provides.

He has guided AASHTO through five reauthorizations of the federal-aid highway and transit program, through 22 years of transportation appropriations bills, through the designation of the National Highway System and a host of other transportation legislation. He has always worked closely and fairly with the state departments of transportation, the con-

struction and contracting industries, the National Governors' Association and numerous other organizations representing state and local government interests.

And in all those years, from the first time I ever met Billy, he has been a true model of integrity, honesty, courtesy and compassion. Billy has decided to retire from his full-time duties at AASHTO, but fortunately for those of us in Congress who've had the pleasure to work with him on so many transportation matters, he intends to continue to keep his hand in the legislative process on a part-time basis as a consultant with AASHTO on governmental affairs.

I was honored to be asked to speak at a reception for Billy on Capitol Hill this past Tuesday evening, June 22. One of the most impressive things about that event was that Billy's family was there, too. Billy's greatest joy is his family. He and his wife Nancy have been married for 45 years and have raised a wonderful family including three sons and a daughter, all of whom are married, with their own children, a total of 10 grandchildren for Billy and Nancy. His oldest or "number one" son, as Billy calls him, is Craig Higgins, with his wife Wendy and their two children Kristen and Keith. Next in order is his son Duane Higgins, his wife Cynthia and their four children, Lauren, Michael, Danielle and Samantha. Then there is daughter Marcy, with her husband Bill Davis and their two children, Carter and Paige. His youngest son is Ron Higgins, with his wife Amy and their two children Rebecca and Tim.

I would like to share my prepared remarks at the reception for Billy Higgins and urge all our colleagues who have had the chance to work with Billy to take the opportunity to wish him well.

IN TRIBUTE TO BILLY HIGGINS

Many of you may not know that Billy and I go way back in Washington, all the way back to the 1970's—when our hair was much darker! We worked together at the Department of the Interior. Billy was at the Bureau of Mines and I was with Secretary Rogers C.B. Morton's office.

It was easy to strike up a friendship with Billy because he was such a genuinely nice guy. In describing him, words immediately come to mind such as fair, honest, trustworthy, principled, hard-working, highest moral standards, a man of character.

The first time we met, too, I saw in Billy a quality that hasn't wavered one millimeter over the years. And that's integrity. A lot of people in this town aspire to be called people of integrity. But along the way there may be a slip here, or a fudge there, and pretty soon, they're compromised and just don't measure up. There's never been a minute in Billy's career when he didn't measure up.

When we walk out the door of whatever business we're in for the last time, all we take with us is our name. Billy Higgins today takes with him his good name—followed by well done, good and faithful servant.

He is truly one of the good guys. He's also one of the most dedicated family men around this town, and it's so good to see his family here this evening. I know how important family is to Billy. I even ran into him a few summers ago on the Outer Banks where he and Nancy and all the kids and grandkids have a tradition of spending vacation time together each year.

And I also know how important faith is to Billy. I have a quotation on my office wall from